

Chief Judge Robert S. Lasnik

05-CR-00260-LTR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

MATTHEW ALEX ERICKSON,

Defendant.

NO. CR05-260L

PLEA AGREEMENT

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, and Todd Greenberg, Assistant United States Attorney, and Defendant, MATTHEW ALEX ERICKSON, and his attorney, Kenneth E. Kanev, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. The Charge. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the following charge contained in the Superseding Indictment. By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document. Defendant further understands that before entering his plea of guilty, Defendant will be placed under oath. Any statement given by Defendant under oath may be used by the government in a prosecution for perjury or false statement.

1 a. Conspiracy to Distribute Cocaine Base, in violation of Title 21, United  
2 States Code, Sections 841(a)(1), 841(b)(1)(A), and 846, as charged in Count 1 of the  
3 Superseding Indictment.

4 2. Elements of the Offense.

5 a. The elements of the offense of Conspiracy to Distribute Cocaine Base, in  
6 violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(A), and 846, as  
7 charged in Count 1 of the Superseding Indictment, are as follows:

- 8 i. Defendant knowingly entered into an agreement with at least one  
9 other person to distribute cocaine base;  
10 ii. Defendant knew that the objective of the agreement was to  
11 distribute cocaine base; and  
12 iii. Defendant entered the agreement intending to further that objective.

13 3. The Penalties.

14 a. Defendant understands that the statutory penalties for the offense of  
15 Conspiracy to Distribute Cocaine Base, in violation of Title 21, United States Code,  
16 Sections 841(a)(1), 841(b)(1)(A), and 846, as charged in Count 1 of the Superseding  
17 Indictment, are as follows: Imprisonment for a term of up to life in prison, with a  
18 mandatory minimum sentence of ten (10) years of imprisonment, a fine of up to four  
19 million dollars (\$4,000,000.00), a period of supervision following release from prison of  
20 at least five (5) years, and a one-hundred dollar (\$100.00) penalty assessment. Defendant  
21 agrees that the penalty assessment shall be paid at or before the time of sentencing.

22 b. Defendant understands that in addition to any term of imprisonment  
23 and/or fine that is imposed, the Court may order Defendant to pay restitution to any  
24 victim of the offense, as required by law. Defendant further understands that a  
25 consequence of pleading guilty may include the forfeiture of certain property, either as a  
26 part of the sentence imposed by the Court, or as a result of civil judicial or administrative  
27 process.  
28

1 c. Defendant further understands that in order to invoke the statutory  
2 sentence set forth above, the United States would have had to prove beyond a reasonable  
3 doubt at trial that the offense charged in the Superseding Indictment involved fifty (50)  
4 grams or more of a mixture or substance containing cocaine base. Defendant waives the  
5 right to require the United States to make this proof, and stipulates that this plea of guilty  
6 includes Defendant's acknowledgment that the offense involved fifty (50) grams or more  
7 of a mixture or substance containing cocaine base.

8 d. Defendant agrees that any monetary penalty the Court imposes,  
9 including the special assessment, fine, costs or restitution, is due and payable  
10 immediately, and further agrees to submit a completed Financial Statement of Debtor  
11 form as requested by the United States Attorney's Office.

12 e. Defendant understands that supervised release is a period of time  
13 following imprisonment during which he will be subject to certain restrictions and  
14 requirements. Defendant further understands that if supervised release is imposed and he  
15 violates one or more of its conditions, he could be returned to prison for all or part of the  
16 term of supervised release that was originally imposed. This could result in Defendant  
17 serving a total term of imprisonment greater than the statutory maximum stated above.

18 f. Defendant understands that by pleading guilty to a felony drug offense,  
19 he will become ineligible for certain food stamp and social security benefits under 21  
20 U.S.C. § 862a.

21 4. Rights Waived by Pleading Guilty. Defendant understands that, by pleading  
22 guilty, he knowingly and voluntarily waives the following rights:

23 a. The right to plead not guilty, and to persist in a plea of not guilty;

24 b. The right to a speedy and public trial before a jury of Defendant's  
25 peers;

26 c. The right to the effective assistance of counsel at trial, including, if  
27 Defendant could not afford an attorney, the right to have the Court appoint one for  
28 Defendant;

d. The right to be presumed innocent until guilt has been established at trial, beyond a reasonable doubt;

e. The right to confront and cross-examine witnesses against Defendant at trial;

f. The right to compel or subpoena witnesses to appear on Defendant's behalf at trial;

g. The right to testify or to remain silent at trial, at which trial such silence could not be used against Defendant; and

h. The right to appeal a finding of guilt or any pretrial rulings.

5. United States Sentencing Guidelines. Defendant understands and acknowledges that, at sentencing, the Court must consider the sentencing range calculated under the United States Sentencing Guidelines, together with the other factors set forth in Title 18, United States Code, Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the history and characteristics of the defendant; (3) the need for the sentence to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (4) the need for the sentence to afford adequate deterrence to criminal conduct; (5) the need for the sentence to protect the public from further crimes of the defendant; (6) the need to provide the defendant with educational and vocational training, medical care, or other correctional treatment in the most effective manner; (7) the kinds of sentences available; (8) the need to provide restitution to victims; and (9) the need to avoid unwarranted sentence disparity among defendants involved in similar conduct who have similar records. Accordingly, Defendant understands and acknowledges that:

a. The Court will determine Defendant's applicable Sentencing Guidelines range at the time of sentencing;

b. After consideration of the Sentencing Guidelines and the other factors in 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the maximum term authorized by law;

1           c.     The Court is not bound by any recommendation regarding the  
2 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines  
3 range offered by the parties, or by the United States Probation Department; and

4           d.     Defendant may not withdraw a guilty plea solely because of the  
5 sentence imposed by the Court.

6           6.     Ultimate Sentence. Defendant acknowledges that no one has promised or  
7 guaranteed what sentence the Court will impose.

8           7.     Statement of Facts. The parties agree on the following facts in support of  
9 Defendant's guilty plea and sentencing. Defendant admits he is guilty of the charged  
10 offense.

11           a.     Daniel Ambaw and Kahsay Abraha distributed crack cocaine in the  
12 Seattle and Everett areas. In or about Spring 2004, Erickson began to sell crack cocaine  
13 for Ambaw and Abraha. In exchange, Ambaw and Abraha allowed Erickson to live with  
14 them in various motel rooms, and paid Erickson small amounts of money. Collectively,  
15 Ambaw, Abraha, and Erickson sold multiple ounces of crack cocaine per week. When  
16 Ambaw and Abraha obtained a new supply of crack cocaine, Ambaw would provide  
17 Erickson with a quantity to sell. After selling the drugs, Erickson gave the proceeds to  
18 Ambaw and Abraha. In addition to Erickson, other people worked for Ambaw and  
19 Abraha selling crack cocaine, including the person referred to in the Indictment as  
20 "M.G.A." Ambaw distributed crack cocaine to Peggy Lee White. "M.G.A." and Abraha  
21 distributed crack cocaine to the person referred to in the Indictment as "J.M.M."

22           8.     Sentencing Factors. The parties agree and stipulate that the following  
23 Sentencing Guidelines provisions apply to this case:

24           a.     A base offense level of 32, pursuant to USSG § 2D1.1(c)(4), because the  
25 amount of cocaine base involved in the offense was more than 50 grams, but less than  
26 150 grams.

27           b.     A two-level downward adjustment, pursuant to USSG § 3B1.2(a),  
28 because the defendant was a minor participant in the offense.

1 c. The United States acknowledges that Defendant has assisted the United  
2 States by timely notifying the authorities of his intention to plead guilty, thereby  
3 permitting the United States to avoid preparing for trial and permitting the Court to  
4 allocate its resources efficiently. If at the time of sentencing, the United States remains  
5 satisfied that Defendant has accepted responsibility, then it will recommend a sentence  
6 that takes this acceptance of responsibility into consideration. Defendant understands and  
7 agrees that the United States will base its recommendation on factors set forth in the  
8 United States Sentencing Guidelines, including Section 3E1.1.

9 d. The parties agree that, with the exception of those listed above, no other  
10 upward or downward adjustments to the Defendant's offense level are applicable. The  
11 Defendant maintains the right to move the Court for a downward departure at sentencing.

12 9. Agreement Not to File Enhancement Penalty Notice. Pursuant to this Plea  
13 Agreement, and conditioned upon Defendant's fulfillment of all of its conditions, the  
14 United States Attorney agrees not to file an enhanced penalty information alleging  
15 Defendant's prior felony drug conviction.

16 10. Non-Prosecution of Additional Offenses. As part of this Plea Agreement, the  
17 United States Attorney's Office for the Western District of Washington agrees to dismiss  
18 Counts 2-6 of the Indictment at the time of sentencing, and agrees not to prosecute  
19 Defendant for any additional offenses known to it as of the time of this Agreement that  
20 are based upon evidence in its possession at this time, or that arise out of the conduct  
21 giving rise to this investigation. In this regard, Defendant recognizes that the United  
22 States has agreed not to prosecute all of the criminal charges that the evidence establishes  
23 were committed by Defendant solely because of the promises made by Defendant in this  
24 Agreement. Defendant acknowledges and agrees, however, that for purposes of  
25 preparing the Presentence Report, the United States Attorney's Office will provide the  
26 United States Probation Office with evidence of all relevant conduct committed by  
27 Defendant.  
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Defendant agrees and acknowledges that any charges to be dismissed before or at the time of sentencing were substantially justified in light of the evidence available to the United States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant with a basis for any future claims under the "Hyde Amendment," Pub.L. No. 105-119 (1997).

11. Post-Plea Conduct. Defendant understands that the terms of this Plea Agreement apply only to conduct that occurred prior to the execution of this Agreement. If, after the date of this Agreement, Defendant should engage in illegal conduct, or conduct that is in violation of his/her conditions of release (examples of which include, but are not limited to: obstruction of justice, failure to appear for a court proceeding, criminal conduct while pending sentencing, and false statements to law enforcement agents, the Pretrial Services Officer, Probation Officer or Court), the United States is free under this Agreement to seek a sentence that takes such conduct into consideration. Such a sentence could include a sentencing enhancement under the United States Sentencing Guidelines or an upward departure from the applicable sentencing guidelines range.

12. Statute of Limitations. In the event that this Agreement is not accepted by the Court for any reason, or Defendant has breached any of the terms of this Plea Agreement, the statute of limitations shall be deemed to have been tolled from the date of the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea Agreement by the Court; or (2) 30 days following the date on which a breach of the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

13. Voluntariness of Plea. Defendant acknowledges that he has entered into this Plea Agreement freely and voluntarily, and that no threats or promises, other than the promises contained in this Plea Agreement, were made to induce Defendant to enter this plea of guilty.

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Todd Greenberg  
Assistant United States Attorney